

**James C. Peck, Jr.**  
**Arbitrator**

**In the Matter of Arbitration Between:**

**FRATERNAL ORDER OF POLICE,  
LODGE NO. 5**

**V.**

**AAA Case No. 01-17-0001-5648  
P/Os Mitchell D. Farrell and Kevin M. Hanvey  
(25 Day Suspension)**

**THE CITY OF PHILADELPHIA**

**Hearing Dates: September 19-20, 2017  
Decision Date: November 20, 2017**

**Appearances:**

For the Union - Marc L. Gelman, Esq., Jennings & Sigmond, P.C.

For the City of Philadelphia - Duncan M. Lloyd, Esq. and Benjamin Patchen, Esq.,  
City of Philadelphia, Law Department

**Procedural Background**

This arbitration was conducted pursuant to a collective bargaining agreement between the City of Philadelphia, Pennsylvania and Fraternal Order of Police Lodge, No. 5, which is the recognized exclusive collective bargaining representative for a unit of police officers employed by the City of Philadelphia.

The City of Philadelphia and FOP Lodge 5 were parties to a collective bargaining agreement with a term of July 1, 2014 through June 30, 2017, which was the operative document at the time the instant grievance was filed. This agreement contains, among other things, a Grievance-Arbitration procedure (Article XXI) culminating in final and binding arbitration under the auspices of the American Arbitration Association. The afore-mentioned agreement has since been replaced by a superseding collective bargaining agreement.

The instant matter arises from grievances filed by the Union on February 24, 2017 on behalf of Police Officers Mitchell D. Farrell and Kevin M. Hanvey, alleging that the two Grievants were each suspended for 25 days without just cause.<sup>1</sup> The Notice of Suspension Without Pay alleged that the two Grievants had engaged in conduct amounting to "Disobedience, Section 6, 008-10: Discharging, using, displaying or improperly handling of a firearm while not in accordance with Departmental Policy."

This grievances were subsequently denied by the City. When the issues of this dispute could not be resolved under the terms of the contractual grievance-arbitration procedure, the underlying grievances was referred to the American Arbitration Association for selection of a neutral arbitrator. Subsequently, by letter dated April 17, 2017, the undersigned was appointed arbitrator in this matter. By letter dated April 19, 2017, the two separate grievances were consolidated for arbitration.

Pursuant to a Notice of Hearing which issued on April 19, 2017, an evidentiary hearing was conducted on September 19 and 20, 2017, at the offices of the American Arbitration Association, 230 South Broad Street, 12<sup>th</sup> Floor, Philadelphia, PA 19103. Both parties were represented by counsel, and at hearing were afforded the opportunity to examine and cross-examine witnesses, and to introduce relevant exhibits. Both Grievants were present and participated fully in the proceeding. Both parties made oral arguments on the record. A Court Stenographer was present and made a verbatim transcript of the proceeding.

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<sup>1</sup> See **Joint Exhibit 2**, received into evidence.

## Issue

Did the City of Philadelphia violate the express terms of the collective bargaining agreement by suspending Police Officers Mitchell D. Farrell and Kevin M. Hanvey for 25 days each, without just cause? If the City is found to have violated the terms of the collective bargaining agreement, what is the appropriate remedy?

## Factual Narrative

### The Cast of Characters:

Police Officers **Mitchel Farrell** and **Kevin Hanvey** were working in West Philadelphia as plainclothes officers on a burglary suppression detail on the evening of April 22, 2014. They were relatively junior patrol officers, having been hired in 2012. On the evening in question, both had been working as plainclothes officers for only about two weeks. As undercover officers, Farrell and Hanvey sported beards, wore civilian clothes (in this case “hoodies”), and drove an unmarked police car. They wore their police badges on lanyards, around their necks.

At about 9:51 PM, while patrolling in the area of 51<sup>st</sup> Street and Florence Avenue in the 18<sup>th</sup> Police District, Officers Farrell and Hanvey heard gunshots, followed almost immediately by a police radio broadcast that six gun shots had been fired at 51<sup>st</sup> and Baltimore Avenue. The two officers responded to the call.

At Willows Avenue and Hatfield Street, the two officers observed a white female on the sidewalk, later identified as **H [REDACTED] D [REDACTED]**. When asked if she had heard gunshots, **D [REDACTED]** replied that she had, and indicated that they had come from the vicinity of the corner store at 51<sup>st</sup> Street and Hatfield.<sup>2</sup> The two officers then proceeded in that direction.<sup>3</sup>

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<sup>2</sup> **D [REDACTED]** later testified that the two officers drove off in the exact opposite direction which she had indicated. See **Exhibit C-1**, in evidence.

<sup>3</sup> See IAD Report, **Exhibit J-7**, received into evidence.

Also on Willows Avenue that evening was P [REDACTED] H [REDACTED], a 20-year old Black male. H [REDACTED] attended college part-time and delivered fast food to help pay the bills. H [REDACTED] had been dispatched by his Employer, [REDACTED] of Upper Darby, to make a sandwich delivery to [REDACTED]. He had parallel-parked his 2001 Ford Taurus in an open space in front of that home. He was making a delivery to C [REDACTED] P [REDACTED], who lives at that address.

H [REDACTED] did not use his 4-way flasher lights when parking, because he didn't wish to attract attention. He was not carrying the usual insulated pizza bag, since he was only delivering a small sandwich order, nor was he wearing any uniform which would have identified him as a pizza deliveryman. H [REDACTED]'s car had no sign or logo indicating that it was a food delivery vehicle.

As H [REDACTED] was returning to his car, he saw two suspicious males, wearing hoodies, vectoring in his direction. H [REDACTED], who was carrying what he characterized as a lot of cash, assumed that he was about to be robbed, (an occupational hazard of pizza deliverymen), and began to take evasive action. H [REDACTED] first ducked down beside his car, and then opened the passenger-side door and slid across into the driver's seat, planning to make a quick escape.

Also on Willows Avenue that evening were three female attorneys, G [REDACTED] C [REDACTED], E [REDACTED] R [REDACTED], and V [REDACTED] H [REDACTED]<sup>4</sup>, who were returning from an "oil painting event" and wine tasting at a restaurant. They were double-parked in front of R [REDACTED]'s house at [REDACTED] [REDACTED], discussing their evening. Attorney C [REDACTED] reported that the street was poorly lit, but that she observed movement on the sidewalk to her right, and saw a white male in a navy sweatshirt, khaki cargo shorts, and a backwards baseball hat run into the street, his arms raised at chest level, with a black object in his hands. All three of these witnesses later testified at the Hearing before me.

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<sup>4</sup> By the time this case was heard at Arbitration, Ms. H [REDACTED] had become V [REDACTED] F [REDACTED].

A [REDACTED] N [REDACTED], who resides at [REDACTED], was taking out the trash at about 9:45 PM when he noticed a car parked in the block with the lights off, but the engine running, and with a person in the driver's seat. At about the same time, N [REDACTED] observed an unmarked police vehicle in the intersection of 51<sup>st</sup> Street and Willows Avenue, and watched as two police officers, with badges around their necks, exited their vehicle and approached the parked car, with their guns drawn.

A [REDACTED] N [REDACTED]'s mother, T [REDACTED] N [REDACTED], also was in front of her house as her son took out the trash, and observed a burgundy vehicle make a U-turn and then stop in mid-street. A white male, wearing tan shorts and a black hoodie, exited the vehicle and walked down the middle of the street, toward where a car was parked at the curb.

#### **Seconds Later:**

Deliveryman P [REDACTED] H [REDACTED] saw one of the two suspicious males approach from the passenger side of his car, shining a flashlight into H [REDACTED]'s eyes. H [REDACTED] raised his hand to block the light, and then saw that the second man was on the driver's side of his car, armed with a handgun. Convinced that he was being robbed, H [REDACTED] first put his car in reverse, to allow him room to exit the parking space. As he began accelerating forward, the man on the sidewalk began shooting at him, and he felt a bullet strike his right leg. The next thing H [REDACTED] remembered was waking up after a crash.<sup>5</sup>

The three female attorneys, who were parked on Willows Avenue, witnessed the shooting. According to G [REDACTED] C [REDACTED], the officer in the street raised his gun to chest level and she heard "pop, pop, pop, pop..." and observed muzzle flashes.<sup>6</sup> After the first few shots, C [REDACTED] heard someone inside the car scream. Attorneys E [REDACTED] R [REDACTED] and V [REDACTED] H [REDACTED] also saw someone in the middle of the street, firing a gun into a car. They immediately ducked for cover.<sup>7</sup>

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<sup>5</sup> See Joint Exhibit 7, Page 7, in evidence.

<sup>6</sup> See Joint Exhibit 7, Page 6, in evidence.

A [REDACTED] N [REDACTED], who had been taking out the trash, saw both police officers draw their guns as they approached the parked vehicle, which immediately accelerated toward them. He claims that the officers fired several shots, at which time the vehicle continued forward, out of control, and crashed at the northeast corner of 51<sup>st</sup> Street and Willows.

His mother, T [REDACTED] N [REDACTED], recalls seeing an officer in the tan shorts and black hoodie approach the parked vehicle from the street side. When the vehicle accelerated toward the officer, he fired approximately 4 gunshots. Ms. N [REDACTED] retreated into her house.

C [REDACTED] F [REDACTED], who had just received her food order from deliveryman F [REDACTED] H [REDACTED], watched as Holland left her house to return to his car. About 20 seconds later, she heard about 10 rapid gunshots. F [REDACTED] asserts that she did not hear any yelling or screaming before she heard the shots being fired.

H [REDACTED] D [REDACTED], who had initially provided directions to the two undercover officers, had continued walking on Willows Avenue and was directly behind the unmarked police vehicle when she heard gunfire, and saw “specks” from a gun. D [REDACTED] ducked behind a parked car and hid. She asserts that she did not hear any yelling or screaming before the gunshots, and did not see anyone in the parked vehicle before the shots were fired.<sup>8</sup>

### The Aftermath:

Deliveryman F [REDACTED] had been shot multiple times. His vehicle lurched forward and, crashed into a corner store at 51<sup>st</sup> Street and Willows. He was almost immediately removed from his vehicle and placed on the ground by uniformed police officers who arrived at the scene, and was then transported to the Hospital of the University of Pennsylvania [REDACTED]

[REDACTED]

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<sup>7</sup> See Joint Exhibit 7, page 6, in evidence.

<sup>8</sup> See Joint Exhibit 7, page 5, in evidence.



Immediately after the shooting, a Crime Scene Unit was dispatched to the location to collect critical evidence. This unit took more than 50 color photographs<sup>9</sup> of the street scene, P [REDACTED] H [REDACTED]'s vehicle, and various pieces of evidence on the ground. Crime Scene Investigator Christopher Reed recovered 14 spent shell casings which had been fired from a .45 ACP pistol, such as the Glock Model 21 pistols issued to Officers Farrell and Hanvey. These shell casings were subsequently examined by the Firearms Identification Unit, which determined that eight (8) of the rounds had been fired from Farrell's pistol, while six (6) of the rounds had been fired from Hanvey's pistol.<sup>10</sup>

The Crime Scene Unit later recovered eight (8) projectiles from P [REDACTED] H [REDACTED]'s Ford Taurus, and a subsequent examination of these projectiles established that both police officers had fired rounds which had struck the vehicle. The remaining six (6) projectiles remain unaccounted for.

During the investigation which followed, the Firearms Identification Unit examined the Glock Model 21 handguns issued to each Officer, and determined that they were each loaded with city-issued Federal HST ammunition. It was determined that each firearm was operable, and was functioning as designed. Each pistol had gunshot residue in the barrel, indicating that they had been recently discharged; and each had a 9 lb. trigger pull, consistent with factory specifications.

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<sup>9</sup> See Exhibit C-4, in evidence.

<sup>10</sup> See Joint Exhibit 7, Page 8, in evidence.

(A Glock Model 21 pistol is a large, polymer frame, semi-automatic handgun which holds 13 rounds in the magazine, plus 1 round in the chamber. Upon examination, Farrell's pistol had seven (7) remaining rounds in the magazine and one in the chamber. Hanvey's handgun had five (5) rounds remaining in the magazine, and one in the chamber.<sup>11</sup>)

Not found in or near P [REDACTED] H [REDACTED]'s automobile was any evidence that H [REDACTED] had possessed a gun, which might have linked H [REDACTED] in some way to the initial gunshots heard by undercover Officers Farrell and Hanvey. Thus, it quickly became evident that H [REDACTED] was not involved in the earlier shooting, nor was he armed at the time that he was shot by the two police officers.

### **The Investigations:**

Following an officer-involved shooting, several different administrative proceedings are conducted concurrently. In addition to collecting evidence on the scene, the Police Crime Scene Unit, led by Lt. John Prendergast of the **Internal Affairs Division Shooting Team**, arranged for H [REDACTED]'s vehicle to be transported to a secure facility where it was thoroughly scrutinized. Spent projectiles which had been fired into the Ford Taurus were recovered, tagged as evidence, and the likely path of those projectiles, from the Officers' duty weapons to where they were imbedded, was tracked. More than 70 additional color photographs were taken by Police Officer Gregory Yacilla, many of them depicting the "trajectory rods" which were inserted into the bullet entry holes in the vehicle, and which traced the path of the bullets as they passed through H [REDACTED]'s Ford Taurus.

Pending the results of the investigations, Officers Farrell and Hanvey were assigned administrative duties. In July 2014, both Officers were assigned to the **Firearms Training Unit** for Post Discharge of Firearms Training. This included one hour of judgmental training on a firearms training simulator (FATS), three hours of live fire and combat training, and three hours of simmunition exercises. Among the subjects covered were Tactical Firearms Training and a Review of Deadly Force Policy.

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<sup>11</sup> See **Joint Exhibit 7**, Page 9, in evidence.



At the same time, the Philadelphia Police Internal Affairs Division continued its investigation of the H [REDACTED] shooting, and conducted interviews with all of the participants, including Officers Farrell and Hanvey, all other police officers on the scene, and various civilian witnesses, as noted above. This investigation resulted in the issuance of a *Summary of Firearm Discharge*, dated March 17, 2016, authored by IAD Lt. John Prendergast, and ultimately approved by IAD Inspector Kevin Hall. This report, which is more than an inch thick, included all of the investigatory evidence, and recommended that the report be forwarded to the *Use of Force Review Board*. Among the conclusions reached by the IAD report were the following:<sup>12</sup>

1. The shooting into H [REDACTED]'s vehicle was encompassed by Police Department Directive #10, which states in part that, "*Police Officers shall not discharge their firearms at or from a moving vehicle unless the officers are being fired upon by the occupants of the vehicle or the vehicle is being used to actively and intentionally assault the officers.*"
2. There was no other threat posed by H [REDACTED] other than the moving vehicle.
3. There is no tactical training given specifically to plainclothes officers.
4. There are no policies, procedures, or prerequisites that address the selection, training, and tactics of plainclothes officers.

Concurrently, while the IAD was conducting its investigation, the **Philadelphia District Attorney's Office** was also reviewing this matter to determine whether criminal charges should be filed against Officers Farrell and Hanvey. Assistant District Attorney Frank Fino ultimately concluded that no criminal proceedings were warranted.

On September 6, 2016, the **Use of Force Review Board** met to consider the shooting of F [REDACTED] H [REDACTED] by Officers Farrell and Hanvey. In its report<sup>13</sup> dated September 28, 2016, the Board concluded that the shooting was not within departmental policy, and that the matter should be referred to the Charging Unit for Departmental Violations. The report contained the following handwritten notations: "Policy violation, Shooting at Moving Vehicle, Poor Tactics."

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<sup>12</sup> See **Joint Exhibit 2**, in evidence.

<sup>13</sup> See **Joint Exhibit 8**, in evidence.

Slightly more than a month later, on October 31, 2016, both Officers were sent notices of proposed discipline, citing them for “*Disobedience*” and for a violation of Directive 10, “*Discharging, using, displaying or improper handling of a firearm while not in accordance with Departmental Policy.*”

The **Police Board of Inquiry (PBI)** is a peer-review panel consisting of a Police Captain, a Police Lieutenant, and a Patrol Officer, which meets to make a recommendation regarding proposed discipline. In the instant case, the PBI met on January 3, 2017, to consider the discipline that was being proposed for Officers Farrell and Hanvey. In its Report<sup>14</sup>, dated January 5, 2017, the Police Board of Inquiry reached a verdict of “Not Guilty”. Among the factors cited by the PBI in its decision were the apparent credibility of the two officers, and the fact that all of the ballistic evidence was consistent with their narrative that they discharged their weapons to protect their lives.

The **Police Board of Inquiry** also made a specific finding that neither Officer placed himself in any harm or jeopardy during this shooting incident. Finally, the PBI relied heavily on the testimony of Internal Affairs Lt. John Prendergast, who had investigated more than 900 police shootings, and who testified that it was his opinion that Officers Farrell and Hanvey were justified in the use of force and had not violated Police Directive 10.

Philadelphia Police Commissioner Richard Ross *disapproved* the PBI report on January 10, 2017, which finalized the decision that each officer would be suspended for 25 days.

In the meantime, shooting victim I [REDACTED] H [REDACTED] had retained attorney Thomas Kline as legal counsel, and sued the City of Philadelphia for the injuries he had suffered. In January 2017 the City and Holland reached a settlement in the amount of \$4.4 million, the largest settlement for a police shooting in Philadelphia history.<sup>15</sup> Shortly thereafter, Officers Farrell and Hanvey returned to street duty, albeit in a different Police District.

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<sup>14</sup> See Joint Exhibit 2, in evidence.

<sup>15</sup> Had this matter gone before a jury, the damages awarded could have been significantly higher.

### The Testimony at Arbitration:

The Arbitration Hearing before me spanned two days, and resulted in a transcript of more than 450 pages. All witnesses were sworn, and were subject to cross examination. To the extent that this portion of the Award does not address the testimony of each and every witness, it is because some testimony was duplicative, or dealt with subject matter that was contained in the numerous Exhibits introduced into evidence.

**Police Commissioner Richard Ross** testified as to his reasons for imposing 25 day suspensions on Officers Farrell and Hanvey, despite the fact that the Police Board of Inquiry had found them "not guilty". Ross, who was First Deputy Commissioner when the H [REDACTED] shooting occurred, characterized the H [REDACTED] shooting as a "*big deal*". Ross noted the climate in the country regarding police shootings, and observed, "*Every police shooting nationally gets attention just about now whereas, before, they were all localized in nature.*" Ross noted, "*...to be candid with you, had it (the shooting) happened probably six months after it did, we would have had a big problem in the city.*"<sup>16</sup>

Ross further absolved H [REDACTED] of culpability, stating, "*We believed that it was a result of him not realizing that these were two plainclothes police officers. Everything about this case ...suggested that this was a tragic, tragic mistake...*" Ross noted, "*...you've got two Caucasian officers but they are bearded, they're in hoodies, and it's dark. And so --it's an area fraught with robberies...it is conceivable that an individual meaning Mr. H [REDACTED] did not know...anything was happening to him other than being robbed.*"

Concerning the fact that this shooting involved shots fired at a moving vehicle, Commissioner Ross noted, "*...the biggest concern was the major policy violation that we have relative to shooting at moving vehicles, as well as the issue of putting yourself in harm's way.*" Ross further observed, "*...we have talked ad nauseam about the fact that gunfire at a vehicle*

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<sup>16</sup> See Transcript Pages 12, and following thereafter.

*will not stop the movement of the vehicle. The only thing that you are likely to do is create a moving missile that is unmanned."*

Attorneys V [REDACTED] P [REDACTED], G [REDACTED] aka G [REDACTED] C [REDACTED], and E [REDACTED] R [REDACTED] all testified as noted previously. The important take-away of their testimony is that none of them heard the two undercover officers identify themselves as police prior to opening fire. One other point of note: Apparently the three attorneys identified themselves to uniform police officers as witnesses to the shooting, but were shunted aside and asked to leave the crime scene. Later, however, all three were interviewed by Internal Affairs.

**Chief Inspector Christopher Werner**, the Commanding Officer of the Training Education Services Bureau, oversees the Police Academy, the Firearms Training Unit, and the Advanced Training Unit. Werner, who holds a law degree, was previously assigned to Charging, and was responsible for reviewing Internal Affairs investigatory documents to determine whether charges should be filed against police officers for infractions.

The primary thrust of Inspector Werner's testimony is that both Farrell and Hanvey acted contrary to police training and doctrine when they approached I [REDACTED] H [REDACTED]'s vehicle without "cover or concealment", and when they placed themselves in a position where they could be struck by H [REDACTED]'s car. Werner noted that by failing to follow the established policy of "tactical repositioning", the Officers had placed themselves in a situation where they may have believed it necessary to use deadly force. Finally, Inspector Werner was critical of the fact that the two officers could not remember pulling the triggers to discharge their firearms, which is inconsistent with the training requirement that an Officer be able to identify his target and have a rationale for using deadly force. For these reasons, Inspector Werner recommended that discipline of both Officers was warranted.

**Officer Gregory Yateilla**, of the Crime Scene Unit, testified without contradiction as to evidence collection procedures, and the various pieces of evidence recovered from P [REDACTED] H [REDACTED]'s vehicle.

**Lt. John Prendergast**, who recently retired from the Philadelphia Police Department, was the head of one of the "Shooting Teams" in the Internal Affairs Division, and has investigated more than 900 officer-involved shootings. He testified at length about the procedures involved in evidence collection following a police shooting. Prendergast asserted that to the best of his knowledge there was no policy prohibiting officers from walking between parked vehicles. Further, Prendergast contended that the shooting which occurred was not violative of Police Directive 10 in that Officers Farrell and Hanvey feared for their lives, since H [REDACTED]'s vehicle was being used, "to actively and intentionally assault the officers."

**Officers Farrell and Hanvey** testified credibly on their own behalf. Basically, each officer asserted that they were searching on foot for a suspicious male whom they believed may have been involved in some random shooting, and didn't know that H [REDACTED] had entered his vehicle until they heard the engine start. At that point, both officers were in untenable positions, with one directly in front of H [REDACTED]'s Taurus and the other in the street without cover. The decision to shoot was made in an instant, and was based on a fear for their lives.

Finally, **Captain Gregory Malkowski**, of the Police Labor Relations Unit testified on rebuttal as to the firearms training that Farrell and Hanvey received, both at the police Academy and while in service. Malkowski noted that both Officers had received FATS training on the shoot/no-shoot simulator eight days before the shooting incident involving P [REDACTED] H [REDACTED].

### **Analysis and Discussion**

As stated in the introduction of this Award, the issue to be decided herein is whether the City violated the terms of the collective bargaining agreement by suspending Police Officers Mitchell Farrell and Kevin Hanvey without just cause. Stated another way, the issue before me is whether the shooting incident which injured P [REDACTED] H [REDACTED] warrants a suspension of 25 days, or whether lesser discipline, or no discipline at all, is appropriate.

There is no question that H [REDACTED] was the innocent victim of a bizarre misunderstanding. Even Police Commissioner Ross subscribes to the theory that H [REDACTED] believed that the two men stalking him were armed robbers, not cops, and that H [REDACTED] took evasive action to avoid them. That evasive action, however, appeared suspicious to Officers Farrell and Hanvey, particularly when H [REDACTED] ducked out of sight.

There is some dispute as to whether the two undercover officers identified themselves as police officers prior to the shooting. While I am not deciding the issue, I am troubled by the absence of any testimony from the numerous civilian witnesses with respect to whether Officers Farrell and Hanvey announced their presence as Police Officers prior to the discharge of their weapons. Both Farrell and Hanvey testified that they forcefully stated they were "Police." None of the civilian witnesses who were either interviewed or testified recounted hearing any such announcement prior to the gun shots. If Officers Farrell and Hanvey failed to properly identify themselves, as recounted by the civilian witnesses, they violated police policy.

The two officers continued their foot pursuit, unknowingly putting themselves in positions which minimized their escape options when H [REDACTED] suddenly started his vehicle and began trying to exit his parking space. Instead of focusing on avoiding being struck by H [REDACTED]'s vehicle, both officers opened fire, grievously wounding H [REDACTED]. It should be noted that neither Officer was actually struck by H [REDACTED]'s car, which suggests that options other than deadly force were, in fact, available, and should have been utilized.

As Police Commissioner Ross noted, a vehicle with an injured driver becomes an unguided missile, which is exactly what occurred in this instance, with H [REDACTED]'s vehicle careening down the street and crashing into a building.

There was much discussion during the Hearing about **Police Directive 10**, and two different versions of this Police Directive were introduced into evidence: **Joint Exhibit 4**, dated October 30, 2012, and **Union Exhibit 2**, effective May 23, 2014 (shortly after the instant shooting). Suffice to say that Directive 10 is an evolving document, but both versions in evidence specifically prohibit officers from discharging their firearms at moving vehicles. In the

instant case, there is insufficient evidence to establish that P [REDACTED] H [REDACTED] intended to assault the two Grievants, rather, in retrospect he was trying to escape being the victim of an armed robbery. Thus, the use of deadly force appears to be questionable, and a possible violation of Directive 10.

After duly considering all of the evidence presented at Hearing, including the testimony of all of the Witnesses and the numerous Exhibits, and after weighing the mitigating circumstances against the aggravating circumstances in this matter, my analysis is as follows:

As mitigating circumstances are the facts that:

- (1) Officers Farrell and Hanvey were relatively inexperienced officers, and totally new to undercover work, and
- (2) Neither Officer had received any specific training in undercover operations, and
- (3) This incident occurred at night, in a high-crime neighborhood, and
- (4) Victim P [REDACTED] H [REDACTED] unfortunately acted in a manner which aroused the suspicions of the two officers, by seeming to attempt to elude them.

As aggravating circumstances, I note that:

- (1) Despite claims that they were in fear for their lives, both officers managed to avoid being injured by H [REDACTED]'s vehicle, which suggests that their fears may not have been entirely justified. Being startled by a car unexpectedly starting next to you might prompt evasive action; but it is not *per se* justification for the use of deadly force, and
- (2) The extent of the injuries inflicted on P [REDACTED] H [REDACTED], which are life-altering, and
- (3) The fact that this matter was settled at a cost of \$4.4 million, and
- (4) The "optics" of this particular shooting were, and continue to be, a public relations nightmare for the City.

Given all of the above, it appears that plenty of mistakes were made, and that there is ample blame to go around. Officers Farrell and Hanvey are not without culpability, and must accept the consequences of their roles in this tragic incident. I find, therefore, that the

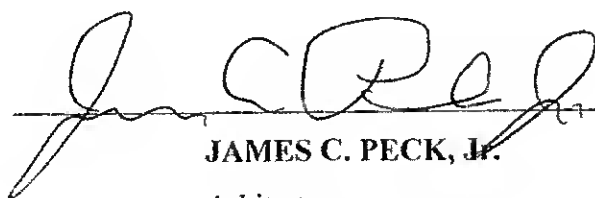
suspensions of 25-days duration, issued to Officers Farrell and Hanvey, were supported by the evidence, were proportionate to the policy violation, and were not violative of the terms of the collective bargaining agreement.

Finally, having heard all of the testimony, I feel compelled to make the following observation: While Officers Farrell and Hanvey made what Commissioner Ross accurately described as a "tragic, tragic mistake", both of these Officers impressed me, during the entirety of the arbitration proceeding, as being forthright, decent, and conscientious Police Officers; albeit relatively inexperienced at the time of the incident in question. I do not attribute to them any improper motive for which they should be vilified. However, their mistaken actions in this matter warrant the discipline imposed.

### **AWARD**

Based on the evidence, and the discussion as set forth above, the undersigned makes the following award:

The grievance alleging that the Police Department violated the collective bargaining agreement by suspending Police Officers Farrell and Hanvey for 25 days is hereby DENIED.

A handwritten signature in black ink, appearing to read "James C. Peck, Jr.", is written over a horizontal line. The signature is fluid and cursive.

**JAMES C. PECK, JR.**

Arbitrator

Media, Pennsylvania

November 20, 2017